



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/613,306

07/07/2003

James L. Rapier III

4309

7590

07/13/2006

Charles Y. Lackey

PO Box 5871

Winston-Salem, NC 27113-5871

EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,306

Applicant(s)

RAPIER, JAMES L.

Examiner

James O. Hansen

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12,13 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 12, 13 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the replies filed on August 15, 2005 & November 17, 2005. It is noted that claims 12, 13 & 17 have been withdrawn by the examiner since the elected embodiment [Group I – figures 1, 1a & 4] arguably shows one slide engaging a side wall of cabinet via a non-referenced bracket member, but does not show the other slide engaging a tray side wall [the elected embodiment depicts one slide engaging a top wall of the tray via a bracket]. Accordingly, these claims have been withdrawn from further consideration.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “cabinet frame interior” must be shown in the elected embodiment or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the

Art Unit: 3637

replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. The Claims are objected to because of the following informalities: Applicant should be consistent with the claimed terminology, for example, the recitation of "cabinet frame interior" should be maintained as opposed to recitations of "frame interior" and "cabinet interior". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-11 & 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubsam-Tomlinson [U.S. Patent No. 5,938,305]. Rubsam-Tomlinson (figures 1-8) teaches of a kitchen trash container system (fig. 1) that is capable of moving into and out of a cabinet frame (note col. 4 – partially depicted as 72) having inherent upper and lower portions, the system comprising: a tray (22) slidably movable into and out of

Art Unit: 3637

the interior of the cabinet frame; a slide mechanism (70) operably associated with the tray and frame interior; a waste container (50) carried by the tray and movable with the tray to enter the frame interior and receive discharge waste and move out of the frame interior to enable the waste to be emptied, with the container able to reenter the frame interior, the tray having a structural configuration {viewed as the main housing with front panel (60)} substantially covering the slide mechanism to prevent dust and waste collection and conceals the slide mechanism from view [such as when the system is seated within the cabinet frame, i.e., the front panel basically covers the slide mechanism from view and prevents dust and other items from access to the mechanism – so far as broadly recited]. The tray has a base portion {broadly viewed as the middle portion of the main housing} and the slide mechanism operably connects with the tray within the base portion. The slide mechanism connects with either a lower portion or upper portion of the cabinet frame depending upon the intended use of the user [It is noted that the limitations in claims 3, 4, 6 & 7 have been given wide latitude in scope since the argument could be made that the elected embodiment may read on either of the limitations, i.e., the lower or upper portion recitations, depending upon the preferred mounting location as determined by the user. Since applicant's device may entail both situations, the prior art has been afforded the same broad functionality since the structures are so similar in scope, function and design]. The slide mechanism includes two pairs of cooperating slides (one pair on each side – fig. 2). As to claim 9, the tray side walls may be viewed as the outer frame walls of the front panel as shown in figs. 1 and 2. The walls covering the slide mechanism in the same manner as noted above when the assembly is in the retracted position in relation to the cabinet frame [when looking at the assembly as shown in fig. 5, the slide

Art Unit: 3637

mechanism is concealed from view when the assembly is within the cabinet frame]. As to claim 11, one pair of slides are held within one tray side wall with the other pair of slides held within another tray side wall [within being broadly viewed as “within the boundary of” for example]. As to claims 13 & 14, the slide mechanism may engage or be operably associated with an upper interior side wall (72) of the cabinet frame.

Conclusion

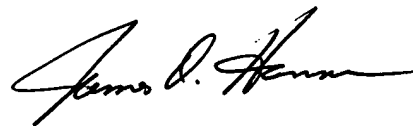
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson et al., Braun et al., and Brochures to C.H Briggs, HAFELE, and Baer describe kitchen trash container systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen
Primary Examiner
Art Unit 3637

JOH
July 6, 2006